

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6629 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

PREMATLAL AMRATLAL PUJARA

Versus

COMPETENT AUTHORITY AND DEPUTY COLLECTOR (ULC) &
ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 28/06/96

ORAL JUDGEMENT

The order passed by the Competent Authority at
Rajkot (respondent No. 1 herein) on 28th June 1984 under
sec. 8(4) of the Urban Land (Ceiling and Regulation)

Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 27th July 1988 in Appeal No. Rajkot-1591 of 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 2 declared the holding of the association of persons headed by the petitioner to be in excess of the ceiling limit by 2832.09 square meters and the holding of the petitioner in his individual capacity to be in excess of the ceiling limit by 3339.06 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filled in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. It was processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed under sub-section (4) thereof on 28th June 1984, respondent No. 1 declared the holding of the petitioner as the head of the association of persons to be in excess of the ceiling limit by 2832.09 square meters and the holding of the petitioner in his individual capacity to be in excess of the ceiling limit by 3339.06 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1501 of 1984. By the order passed on 27th July 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. Learned Assistant Government Pleader Shri Sompura has raised a preliminary contention regarding maintainability of this petition under art. 227 of the Constitution of India. Thereupon learned Advocate Shri Nanavaty for the petitioner orally prays for treating this petition as also under art. 226 of the Constitution of India. Such oral prayer is accepted and this petition is treated as also under art. 226 of the Constitution of India on payment of the deficit court-fees, if any, within 15 days from today.

4. It transpires from the impugned order that the petitioner had shown interest of his two brothers in

certain properties declared by him under sec. 6(1) of the Act. Respondent No. 1 has treated 3 brothers as an association of persons. As rightly submitted by learned Advocate Shri Nanavaty for the petitioner, that conclusion reached by respondent No. 1 cannot be sustained in law in view of the binding Division Bench ruling of this court in the case of Chhaganlal Trikamdas Thakker and others v. The Competent Authority, Rajkot and others reported in 1994 (1) Gujarat Current Decisions 1. It has been held therein that co-owners of a property cannot be treated as an association of persons.

5. As rightly submitted by learned Advocate Shri Nanavaty for the petitioner, constructed properties in existence prior to coming into force of the Act could not have been included in the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It transpires from the impugned order at Annexure A to this petition that certain constructed properties have been included in the petitioner's holding. It is contrary to the aforesaid binding ruling of the Supreme Court. Such constructed properties will have to be excluded from his holding.

6. Learned Advocate Shri Nanavaty has submitted that certain properties were agricultural lands and agricultural operations were in fact carried on therein on the date of coming into force of the Act. It has been urged that such properties deserve to be excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465.

7. In order to apply the aforesaid binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra), it will have to be seen whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence on the date of coming into force of the Act with respect to the lands in question and whether or not the lands in question were situated in the agricultural zone therein if it was in existence. Thereafter it will have to be ascertained whether or not agricultural operations were in fact carried on therein on the date of coming into force of the Act. This inquiry will have to be made by respondent No. 1.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this

petitions as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the law declared by the aforesaid rulings of the Supreme Court and of the Division Bench of this Court and in the light of this judgment of mine.

9. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 28th June 1984 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 27th July 1988 in Appeal No. Rajkot-1501 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute with no order as to costs.
